IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL.

A.O. No. 166/2001
(F.A.F.O. No.1144/1993)

U.P. State Road Transport
Corporation through the Regional
Manager, Nainital Respondent/Appellant.

Vs.

1. Smt. Pushpa Devi W/o late Mohan Singh
2. Master Deepak Singh,
3. Km. Kamla,
4. Km. Rita
5. Km. Devi
6. Km. Deepa

Minor children of late Mohan Singh
Under the guardianship of their mother
Smt. Pushpa Devi
All R/o Harkoti Talai, P.S. Sangla
Kothi, District Pauri Garhwal, presently
residing at Sugar Factory Aria Kicha, P.O.
Kicha, P.S. Kicha, District Nainital..Claimants/Respondents.

AND

Cross Objection No. 8870/2005.

1. Smt. Pushpa Devi W/o late Mohan Singh
2. Master Deepak Singh,
3. Km. Kamla,
4. Km. Rita
5. Km. Devi
6. Km. Deepa

All R/o Harkoti Talai, P.S. Sangla
Kothi, District Pauri Garhwal, presently
residing at Sugar Factory Aria Kicha, P.O.
Kicha, P.S. Kicha District U.S. Nagar….Cross Objectors.

Vs.

U.P. State Road Transport Corporation through its

Regional Manager, Nainital Respondent.

Sri A.N. Sharma learned counsel for U.P.S.R.T.C.
Sri V.K. Kohli, learned counsel for the claimants/ cross objectors.

(Hon'ble B.C. Kandpal, J.)

This Appeal, U/S 110-D of the Motor Vehicle Act, 1939 read with Section 173 Motor Vehicles Act 1988, has been preferred by the U.P.S.R.T.C. against the judgment and award dated 22-4-1993, passed by the M.A.C.T./Special Judge/Addl. District Judge, Nainital, in

M.A.C.T. Case No. 150/1988, Smt. Pushpa Devi and others Vs. U.P.S.R.T.C.

2- Brief facts of the case are that on 1.12.1987, at about 10.30 A.M. on Kichha-Haldwani Motor road, when the deceased Mohan Singh was going on his bicycle towards Sugar Factor, he was hit by U.P.S.R.T.C. bus No. UGO 9897 which was being driven rashly and negligently by its driverAnand Singh, as a result of which Mohan Singh sustained grievous injuries and subsequently died in the hospital at about 2.30 P.M. At the time of accident the deceased was aged about 40 years and was employed in G.P. Pant Sugar Factory Kichha and was getting Rs. 1049=10 P. per month besides other benefits. It was also alleged that the deceased was spending Rs. 900/- per month in the maintenance of his family. The claimants being the widow and children of the deceased, have filed the claim petition.

3- The O.P./appellant U.P.S.R.T.C. contested the claim petition by filing its W.S. It was alleged in the W.S. that the accident occurred due to the rash driving of the bicyclist. It was also alleged that the accident did not occur due to the negligence of the bus. It was also alleged that the bus was also damged in the accident and the driver and conductor of the bus had taken the deceased to the hospital.

4- On the pleadings of the parties, the following issues were framed in the claim petition:-

1- Whether the driver of the vehicle No. UGO 9897 beonging to respondent was driving the bus rashly and negligently, as a result of which the accident happened?. If so, its effect?.
2- Whether the deceased Mohan Singh sustained injuries due to rash and negligent driving of the vehicle, as alleged by the claimants?.
3- Whether the claim petition is bad for non-impleadment of State of U.P. as party?. If so, its effect?.

4- Whether the alleged claim by the claimants is execessive and cannot be granted?.

5- To what amount are the claimants entitled to get from the respondents?.

5- Parties adduced evidence in support of their cases. The Tribunal, after hearing learned counsel for the parties and perusing the evidence on record, partly allowed the claim petition for the recovery of Rs. 72,000/- as compensation along with interest @ 12% per annum from the date of filing of the claim petition till the date of recovery of the amount, against the respondent. It was also directed that the interim compensation, if any received by the claimants, will be deducted from the amount awarded in the claim petition.

6- Feeling aggrieved, U.P.S.R.T. has filed the appeal before Allahabad High Court which has been transferred to this court, after creation of new State.

7- The claimants also filed cross objection, against the impugned judgment and award, for enhancement of the award on the grounds that the learned Tribunal awarded a meager amount towards the compensation and looking to the age of the deceased and dependency of the claimants, the claim should have been allowed to the tune of Rs. 2,90,000/-.

8- Heard learned counsel for the parties and perused the record.

9- Learned counsel for the appellant/U.P.S.R.T.C. has submitted the Smt. Pushpa Devi, widow of the deceased has been given employment and further she is being paid family pension and no substantial pecuniary loss has been caused to the claimants, as such the amount of award is erroneous.

10- On the other hand, learned counsel for the claimants/cross objectors has submitted that the deceased at the time of accident was of 40 years of age and he left behind his widow and five minor

children and looking to the dependency the tribunal should have allowed the compensation of Rs. 2,90, 000/-.

11- I have gone through the record of the case and I am of the view that the submissions raised by the learned counsel for the claimants as well as the U.P.S.R.T.C. have no substance.

12- The Tribunal has recorded the finding that the claimant Smt. Pushpa Devi, after the death of her husband, gets work for 15-20 days as casual labourer in the Factory and thus she earns Rs. 700/- per month. She was further getting family pension @ Rs. 500/- per month, the total monthly income of the claimant was assessed for Rs. 1200/-. After giving due consideration to the earning of the claimant Smt. Pushpa Devi, the learned Tribunal assessed the loss of the claimants as Rs. 300/- per month and this monetary loss was granted for twenty years. In the claim petition the income of the deceased has been shown Rs. 1049=10P. per month. Smt. Pushpa Devi examined herself before the claim tribunal and she has deposed that her husband at the time of accident used to spend Rs. 900/- per month on his family members. In her cross examination she admitted that her husband used to spend Rs. 500/- - 600/- per month on his personal expenses. Looking to the number of dependents of the deceased and the factor that Smt. Pushpa Devi after the death of her husband is getting casual labour in the Factory and is earning about Rs. 700/- per month and she is also receiving family pension of Rs. 500/- per month, the amount of Rs. 72,000/- as compensation, awarded by the Tribunal is just and proper.

13- The learned Tribunal awarded interest @ 12% per annum from the date of filing of the claim petition till the date of final payment, which in my opinion, needs no interference.

14- For the reasons aforesaid, the appeal as well as the cross objections, have no merit and are liable to be dismissed.

15- Accordingly, the appeal filed by the U.P.S.R.T.C. is dismissed.

The impugned judgment and award dted 22-4-1993, passed by the Tribunal, is hereby confirmed.

16- The cross objections filed by the claimants/respondents are also rejected. No order as to cost.

(B.C. Kandpal, J.)

Dated: 4-12-2006
ISB